

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

JOHN DOE 1, et al.,	.
	.
Plaintiffs,	.
	. Case No. 07-cv-03406
vs.	.
	. Newark, New Jersey
CHIQUITA BRANDS	. December 8, 2016
INTERNATIONAL, INC., et al.,	.
	.
Defendants.	.

TRANSCRIPT OF TELECONFERENCE  
BEFORE THE HONORABLE JAMES B. CLARK, III  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs:	JUDITH BROWN CHOMSKY, ESQ. 8120 New Second Street Elkins Park, PA 19027 (215) 782-8367 jchomsky@igc.org
	MARCO SIMONS, ESQ. EarthRights International 1612 K Street NW Suite 401 Washington, DC 20006 (202) 466-5188

Audio Operator:

Transcription Service:	KING TRANSCRIPTION SERVICES 3 South Corporate Drive, Suite 203 Riverdale, NJ 07457 (973) 237-6080
------------------------	--

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

1 (APPEARANCES continued)

2 For the Defendants: CYNTHIA STENCEL BETZ, ESQ.  
3 McCarter & English, LLP  
4 Four Gateway Center  
5 100 Mulberry Street  
6 Newark, NJ 07102  
7 (973) 622-4444  
8 Cbetz@mccarter.com

6 For the Defendant ELISSA J. PREHEIM, ESQ.  
Robert Olson: Arnold & Porter Kaye Scholer LLP  
7 601 Massachusetts Ave, NW  
8 Washington, DC 20001  
9 (202) 942-5503  
10 Elissa.preheim@apks.com

10 R. STANTON JONES, ESQ.  
11 Arnold & Porter Kaye Scholer LLP  
12 601 Massachusetts Ave, NW  
13 Washington, DC 20001  
14 (202) 942-5563  
15 Stanton.jones@apks.com

13 For the Defendant JOHN B.T. MURRAY JR., ESQ.  
William Tsacalis: Squire Patton Boggs  
14 1900 Phillips Point West  
15 777 South Flagler Drive  
16 West Palm Beach, FL 33401  
17 (561) 650-7213  
18 Jb.murray@squirepb.com

17 For the Defendants ARDITH BRONSON, ESQ.  
Cyrus Freidheim and DLA Piper LLP (US)  
18 Robert Kistingner: 200 South Biscayne Boulevard  
19 Suite 2500  
20 Miami, Florida 33131-5341  
21 (305) 423-8562  
22 Ardith.bronson@dlapiper.com

21 For the Defendant ANN D. WILES, ESQ.  
Charles Keiser: BuckleySandler LLP  
22 1250 24th Street NW, Suite 700  
23 Washington, DC 20037  
24 (202) 349-7942  
25

1 (Commencement of proceedings at 10:43 A.M.)

2

3 THE COURT: Hey, folks, Judge Clark here. Let me  
4 say before we get started, we're on the record in John Doe  
5 versus Chiquita Brands. It's Docket Number 07-3406 (JMV),  
6 and it is 20 minutes before 11 on December 8th, 2016. It's  
7 11 in the morning.

8 I will take appearances. I want to advise you -- I  
9 know the question came up, can somebody record this  
10 privately. I mean, we are being recorded on the record, but  
11 that's the appropriate way to do it. I do not expect anybody  
12 to be recording this privately. All right?

13 With that, I will take appearances of plaintiff's  
14 counsel.

15 MR. SIMONS: Yes, Your Honor, Marco Simons from  
16 EarthRights International for the plaintiffs. I'm here with  
17 Judith Brown Chomsky, also for the plaintiffs.

18 THE COURT: All right. Good morning.

19 MS. CHOMSKY: Good morning.

20 THE COURT: And for defendants. Why don't we start  
21 with Ms. Betz?

22 MS. BETZ: Sure, Your Honor, I'd be happy to give  
23 you the names of all counsel, if you prefer, or do you want  
24 them individually?

25 THE COURT: It might be -- that might be easiest.

1 MS. BETZ: Yes, I have a list.

2 So this is Cynthia Betz from McCarter & English,  
3 and I am local counsel for the five individual defendants.

4 Also on the line today for defendant Robert Olson  
5 are Elissa Preheim and Stanton Jones, Arnold & Porter.

6 Then for defendant William Tsacalis, we have  
7 J.B. Murray of Squire Patton Boggs.

8 For defendants Cyrus Freidheim and Robert  
9 Kistingner, we have Ardith Bronson of DLA Piper.

10 And for defendant Charles Keiser, we have Ann Wiles  
11 from BuckleySandler.

12 THE COURT: All right. Good morning to you all.  
13 My understanding here -- I've looked through the papers and  
14 the letters that you so kindly sent me. The letters were  
15 very helpful to kind of outline what the case was all about  
16 and why we are here.

17 My understanding is that we have a multi-district  
18 litigation in Florida that's responsible for handling this  
19 litigation as a general matter and that cases were for  
20 allegants Chiquita and a bunch of individuals.

21 The court in Florida is handling the case with  
22 respect to Chiquita.

23 However, with respect to a number of the individual  
24 defendants, the court wasn't satisfied that the issue of  
25 personal jurisdiction had been properly addressed, and a

1 number of the cases that had gone to Florida had come from  
2 other districts. One of the cases had come from this  
3 district. And the one that came from this district included  
4 the five individual defendants who are here on the call  
5 today.

6 And my understanding is it's been remanded to the  
7 District of New Jersey for us to consider the issue of  
8 personal jurisdiction or more specifically, whether or not  
9 there are -- we should transfer the case to a district that  
10 might fairly have had personal jurisdiction or in which these  
11 five individual defendants might fairly have been sued in the  
12 initial -- in the initial point of the litigation, and then  
13 likely -- you know, we'll need to grant the motion and  
14 transfer the venue to the courts where the case might have  
15 been brought in the first instance. Then the case might from  
16 those courts be transferred back to the Florida court.

17 Is that about right, Ms. Chomsky?

18 MS. CHOMSKY: Yes, it is.

19 THE COURT: Okay. Procedurally, you know, kind of  
20 all over the place, but I -- I basically understand what  
21 we're talking about.

22 So we need to -- I guess the thing we need to do  
23 today is give you all a motion schedule. Right?

24 MR. SIMONS: Yes, Your Honor. This is Marco  
25 Simons.

1           And just to throw it out there, the plaintiffs  
2 certainly are interested in moving this along as quickly as  
3 possible. I know it hasn't been in front of this Court very  
4 long, but the MDL court's initial ruling suggesting remand  
5 and transfer was issued six months ago. The MDL court just  
6 denied the forum non conveniens motion for dismissal, which  
7 clears the way for the cases there to advance, so we're  
8 certainly interested in getting this resolved and back in  
9 front of the MDL court as soon as possible.

10           THE COURT: All right. The -- I guess the motion  
11 would be by the individual defendants. Right?

12           MR. SIMONS: We believe the motion would be by the  
13 plaintiffs -- to transfer the claims.

14           THE COURT: Okay. So the plaintiff is going to  
15 make the motion to transfer. Is there a companion motion? I  
16 mean, do the plain- -- do the defendants make a motion for  
17 dismissal for lack of personal jurisdiction? Or is it just  
18 motion for transfer that we're looking at?

19           MR. SIMONS: I don't know. We've heard no  
20 indication that the defendants are planning to make a motion  
21 for dismissal.

22           THE COURT: I mean -- so as I understand it, I  
23 mean, the way it stands right now, this is almost a  
24 ministerial action that we're taking here. Is that right?

25           MR. SIMONS: We believe so, Your Honor.

1 MS. PREHEIM: Your Honor, I --

2 THE COURT: Go ahead.

3 MS. PREHEIM: I'm sorry. This is Elissa Preheim on  
4 behalf of Robert Olson.

5 I don't think there's a dispute that there's no  
6 personal jurisdiction over the individual defendants in New  
7 Jersey. I think the issue here is whether transfer to  
8 another jurisdiction is proper.

9 THE COURT: Okay. And you, I suppose, may be  
10 opposing the motion to transfer, but we'll see. Right?

11 MS. PREHEIM: Yeah, the expectation is that we  
12 would oppose the motion to transfer.

13 THE COURT: All right. Well, how soon -- and in  
14 what -- is it a bunch of different districts for the five  
15 individuals defendants, Ms. Chomsky? Or Mr. Simons. Or is  
16 it several different districts?

17 MR. SIMONS: We're looking at two different --  
18 transfer districts.

19 One thing I did want to raise, however, was we  
20 think it would be more efficient and it would narrow the  
21 issues before the Court if the individual defendants would  
22 answer whether they agreed that they were subject to personal  
23 jurisdiction in our proposed alternate forums, or whether  
24 they would consent to personal jurisdiction in our proposed  
25 alternate forums.

1           We understand they object to transfer in general.  
2 But we don't -- we don't really see a need for briefing back  
3 and forth over where people are subject to personal  
4 jurisdiction, if there's even any actual disputes there. I  
5 mean, we know --

6           THE COURT: Yeah, I understand what you're saying.

7           What do the defendants think of that? I mean, if  
8 this is -- if this is a transfer issue, we're only layering  
9 issue upon issue upon issue, if we're going to flag personal  
10 jurisdiction in other jurisdictions. I mean, are there  
11 jurisdictions that the defendants would admit -- you know,  
12 are there districts where the defendants would admit there is  
13 personal jurisdiction over them?

14           I guess, I'll start with you, Ms. Preheim, since  
15 you spoke before.

16           MS. PREHEIM: Sure, Your Honor, the issue is that  
17 the defendants, as we read the law, don't have an obligation  
18 to consent or agree to jurisdiction in advance of a -- to  
19 transfer. And the law is clear that it's -- the burden is  
20 the moving party's -- to demonstrate that all defendants are  
21 subject to jurisdiction in the choice of their -- their  
22 choice of forum.

23           THE COURT: All right. So the short answer is you  
24 don't want to agree that there's a place that might actually  
25 have jurisdiction over your clients.



1 MS. PREHEIM: Well, without seeing the asserted  
2 jurisdiction and the basis of that assertion. At least as  
3 I -- to plaintiff's counsel, once we see their motion, we  
4 will assess and determine whether there's a basis to object  
5 on personal jurisdiction grounds, knowing that we will object  
6 on procedural grounds.

7 MR. SIMONS: Your Honor, we'd be happy to provide  
8 that information informally and meet and confer prior to  
9 filing our motion. We just think it's -- we just think it's  
10 silly to be presenting issues to the Court, for example, when  
11 we know, you know, three of the individual defendants lived  
12 and worked in Ohio during the relevant time periods. It  
13 should be obvious -- personal jurisdiction --

14 THE COURT: Well, if it's obvious, you're not  
15 really saving us a whole lot of time by doing a  
16 meet-and-confer. In fact, you may be eating up more time, if  
17 you can just make the pitch in your papers, they were living  
18 in Ohio when this all happened, and that's where we want to  
19 transfer them to -- for them to object to that or argue  
20 against it, if that's, in fact, the case, may be futile and  
21 they won't do it.

22 But I think to layer in meets-and-confers before we  
23 even get to the briefing, if the jurisdictional questions are  
24 going to be that straightforward, might just drag the thing  
25 out a little bit longer.

1 I understand your sentiment, Mr. Simons, and you  
2 want to keep this moving forward, but I think maybe if we  
3 just have people brief it, it will move it forward as fast as  
4 I'm going to be able to move it forward.

5 Let me ask the other defendants, well, speak up if  
6 you disagree with Ms. Preheim, are you all going to just  
7 follow that kind of an approach to this thing? Mr. Murray?

8 MR. MURRAY: I say I'm following that same  
9 approach.

10 THE COURT: Ms. Bronson?

11 MS. BRONSON: The same here, Your Honor, we plan on  
12 following their approach as well.

13 THE COURT: And, Ms. Wiles?

14 MS. WILES: The same, Your Honor.

15 THE COURT: Okay. Now, Mr. Simons, I take it that  
16 none of these five defendants, that there's not -- you're not  
17 going to argue that there's personal jurisdiction in New  
18 Jersey over any of them. Is that right?

19 MR. SIMONS: There is a possibility with respect to  
20 Mr. Keiser, because, as far as we know, he was not actually  
21 residing in the United States during and all the time period,  
22 and so there's a possibility of personal jurisdiction under  
23 Rule 4(k)(2), if there is no -- if -- has greater ties.

24 THE COURT: And then, as I say, if the cases all  
25 get transferred to -- or even if it's in New Jersey, they may

1 all go back to Florida eventually. Is that right?

2 MR. SIMONS: That would be our expectation,  
3 Your Honor.

4 THE COURT: All right. All right. So what do we  
5 want -- how much time do you want to brief the motion,  
6 Mr. Simons?

7 MR. SIMONS: We can get the motion on file next  
8 week. It's essentially ready.

9 THE COURT: All right. So why don't we set --

10 MS. BETZ: Your Honor?

11 THE COURT: Mm-hmm.

12 MS. BETZ: This is Cynthia Betz from  
13 McCarter & English.

14 I just wanted to alert Your Honor that we have  
15 been, you know, working -- to come up with a reasonable  
16 briefing schedule.

17 THE COURT: Right.

18 MS. BETZ: And in light of, of course, the holidays  
19 and our side has some commitments in early January, and  
20 obviously, we're trying to do our best to coordinate amongst  
21 all the defendants so that Judge Vazquez has a -- to the  
22 extent possible, a consolidated response so that it's easy  
23 for him to understand. In light of that, we were really only  
24 about a week apart when we were coming up with our final  
25 briefing schedule, the disputes being with respect to the

1 week that the -- we had proposed that the end of briefing be  
2 February 6th, and it was my understanding that plaintiffs  
3 were concerned that that was a motion day and that the Court  
4 wouldn't have time to consider and hear it on that day.

5 My experience -- and, you know, I haven't been  
6 before Judge Vazquez -- is that the district court doesn't  
7 often hear the parties right on the motion day and has no  
8 objection to scheduling --

9 THE COURT: -- no --

10 MS. BETZ: -- schedule should it decide to hear  
11 arguments.

12 THE COURT: Well -- and it's an odd -- it's an odd  
13 argument. I've never heard that one before that we don't  
14 want to have our motion returnable on X date because it's a  
15 motion day. I mean, that's the day we're supposed to have --

16 MS. BETZ: Oh, sure.

17 THE COURT: -- we're supposed to have motions  
18 returnable on.

19 MR. SIMONS: Your Honor, not that the return date  
20 would be a motion day, but that the proposed due day for the  
21 reply brief would have --

22 THE COURT: Oh, all right. All right.

23 So the proposed due date for the reply brief was  
24 going to be February 6th, which would make the next motion  
25 date the 21st. Well, what --

1 MR. SIMONS: -- for Your Honor's sake, if that's at  
2 all possible, Your Honor. Or if there's another --

3 THE COURT: Well, Ms. Betz, you tell me, I mean,  
4 if -- if Mr. Simons is going to get his brief in by the 19th  
5 of --

6 (Simultaneous conversation)

7 THE COURT: By the --

8 MR. SIMONS: We can file Monday, Your Honor.

9 THE COURT: No, are you -- if he's going to get his  
10 brief in next week, wouldn't it be enough time for you to get  
11 this done by January 23rd? Or is that not -- is that not  
12 enough time?

13 MS. BETZ: Well, the problem, Your Honor, you know,  
14 is the holiday schedule. And as I mentioned, as we explained  
15 to plaintiffs, our team is -- in early January, and because  
16 we're trying to coordinate with a lot of defendants to have,  
17 you know, hopefully one -- one response, if we can, it just  
18 really wasn't feasible. So we were just asking for a  
19 professional courtesy. And we actually wanted until  
20 January 30th.

21 THE COURT: Well, I don't want to -- frankly, I  
22 understand Mr. Simons' interest in moving this, and it is an  
23 old case, but that -- you know, that rubs both ways. What's  
24 a couple of ways to a case that was filed in '07, but at the  
25 same time, yeah, you don't want to delay things

1 unnecessarily.

2 But I'm not going to ruin anybody's holiday or jam  
3 people up unnecessarily.

4 So, Mr. Simons, I'll let them file their brief on  
5 the 30th of January. And you can file any reply on the 13th  
6 of February.

7 And we'll have the return date of February 21st.

8 That said, it's not absolutely necessary for you to  
9 rush and get this thing in by Monday. Do you want a little  
10 more time to make it a little easier for yourself?

11 MR. SIMONS: That's fine, Your Honor, we can file  
12 by the end of next week.

13 THE COURT: All right. Okay. So we'll file -- the  
14 motion will be filed by December 16th.

15 The response will be filed by January 30th.

16 The reply will be filed -- if a reply is going to  
17 be made, will be February 13th.

18 And the formal return day will be the 21st of  
19 February.

20 All right?

21 UNIDENTIFIED SPEAKERS: Thank you, Your Honor.

22 THE COURT: All right. Is there --

23 MS. BETZ: Your Honor?

24 THE COURT: Yeah.

25 MS. BETZ: It's Cynthia Betz, again.

1 I have one other administrative issue. Because the  
2 way this has worked and I guess the amended pleading that  
3 added these individual defendants was filed in the MDL, the  
4 way the docket appears here in the DNJ, the individual  
5 defendants whom I represent don't appear on the docket, so I  
6 have been unable to make an appearance nor can I make the pro  
7 hac applications for my cocounsel.

8 So I don't know if we could present a consent order  
9 of some sort? I don't know if you have a suggestion of how  
10 to proceed to make that happen.

11 THE COURT: Yeah, I would present a consent order.  
12 I think that's probably the best way. You know, note -- note  
13 that your clients are, in fact, defendants. Explain in the  
14 prefatory language the circumstances, you know, respecting  
15 why they're not listed in this case and why they should be  
16 listed in this case. Note that there's consent, and we'll go  
17 ahead and sign something like that. All right?

18 MS. BETZ: Yes, I appreciate that, Your Honor.

19 THE COURT: And do that --

20 MS. BETZ: And just to let you know, all the  
21 parties have consented to pro hac on either side so we can  
22 expedite that as well.

23 THE COURT: Okay. And do all of that as quickly as  
24 you can. All right? And you can send those sorts of  
25 things --

1 MS. BETZ: Absolutely.

2 THE COURT: -- to my chambers.

3 MS. BETZ: Thank you, Your Honor.

4 THE COURT: Or -- well, you know what? You can  
5 them to my chambers or you can efile them, and we'll get  
6 them. It's probably better to efile them.

7 So that's that. We'll keep an eye out for the  
8 order that gets the parties aligned right. We'll keep an eye  
9 out for pro hac stuff. And you have a schedule for filing  
10 all of these papers. And we will try to move this as quickly  
11 as possible. All right?

12 UNIDENTIFIED SPEAKERS: Thank you, Your Honor.

13 THE COURT: All right. Thank you very much, folks.  
14 Take care.

15 (Conclusion of proceedings at 10:58 A.M. )  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



## Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 17 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

s/ **Sara L. Kern**

18th of February, 2017

Signature of Approved Transcriber

Date

Sara L. Kern, CET\*\*D-338  
King Transcription Services  
3 South Corporate Drive, Suite 203  
Riverdale, NJ 07457  
(973) 237-6080